IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4615 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KUMBHANI CHETANBHAI BABUBHAI

Versus

STATE OF GUJARAT

Appearance:

MR YM THAKKAR for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 22/08/2000

ORAL JUDGEMENT

Heard Mr. P.M. Thakkar for Mr. Y.M. Thakkar, learned advocate for the petitioner, and Mr. Mukesh Patel, learned APP for the State. RUle. Learned APP Mr. Mukesh Patel waives service of rule on behalf of the

respondent State.

2. Present Bail Application arises on account of cancellation of bail at the hands of learned Addl. Sessions Judge, Bhavnagar,(Camp at Mahuva) by his order dated 11-8-2000 rendered in Criminal Misc. Application No. 719 of 2000.

3. It is not in dispute that the petitioner and one Shantilal Nanjibhai Patel were accused of the offences punishable under Section 420, 467, 477 (C), 120 (1) (B), 489 (A) to (E) and Section 34 of IPC. It was alleged that the petitioner in company of other co-accused had attempted to get encashed the forged Fixed Deposit Receipt in sum of Rs.4.5 crores at Union Bank of India, Darbargadh branch, Mahuva. The F I R was lodged on 8-4-2000 and admittedly within the statutory period as contemplated by proviso (2) to Section 167 of the Criminal Procedure Code, 1973 ("Code" for short) charge sheet was not submitted. Both the accused persons preferred their respective bail applications on that ground. But, learned Magistrate refused bail of the co-accused Shantilal Nanjibhai Patel. However, in Cri. Misc. Application No. 4007 of 2000 this Court, as per order dated 8-8-2000 (Coram: H.R. Shelat, J) granted bail on the ground that, charge sheet was not submitted within the statutory period and right had already accrued to the said petitioner to be released on bail by virtue of the aforesaid proviso of the Code.

3. In so far as present petitioner is concerned, he had made an application under similar circumstances, earlier to filing of the charge sheet, and the learned Magistrate granted bail. However, learned Addl. Sessions Judge by impugned order considered the fact that the Magistrate had enlarged time in favour of the Investigating Agency for filing of the charge sheet. That appears to have weighed with the learned Addl. Sessions Judge in cancelling bail granted in favour of the petitioner.

4. I have heard learned advocate for the petitioner and learned APP for the State. I am of the opinion that the view taken by learned Addl. Sessions Judge, Bhavnagar (Camp at Mahuva) would not be in consonance with the pronouncement of the Apex Court in Mohamed Iqbal Madar Sheikh & Ors,. Vs. State of Maharashtra, reported in (1996) 1 SCC, 722, relying on which this Court had granted bail to the other co-accused. Simply because charge sheet was filed after the bail was granted, it cannot be said that the same would not be available to

the petitioner only on the ground that the application for cancellation for bail has been moved before the learned Addl. Sessions Judge. Learned Addl. Sessions Judge has cancelled bail only on that ground and on no other ground as contemplated under section 439 (2) of the Code. On both these grounds, bail could not have been cancelled, as can be seen from the observations of the Apex Court in Mohamed Iqbal Madar Sheikh (supra). Following order therefore, is required to be passed, in tune with the order passed by this Court in the matter of other co-accused :-

The applicant is ordered to be released on bail in connection with Crime Register No: I-71/2000 of Mahuva Police Station on his executing a bond of Rs.10,000/(Rupees Ten thousand only) with one solvent surety of the like amount to the satisfaction of the lower Court and subject to the conditions that he shall;

(a) not take undue advantage of his liberty or abuse his liberty;

(b) not act in a manner injurious to the interest of the prosecution;

(c) maintain law and order;

(d) mark his presence before Bhavnagar Police Station on every Friday and Tuesday at any time between 9.00 a.m. to 2.00 p.m., and on every first day of a month at Mahuva Police Station, till the trial is over. If Friday or Tuesday falls on 1st day of a month the petitioner will be immuned from marking the presence at Bhavnagar police station on that event without prior permission of the concerned Court.

(e) not leave the local limits of District Bhavnagar and District Amreli.

(f) furnish the address of his residence at the time of execution of the bond and shall not change his residence without prior permission of this Court;

(g) surrender his Passport, if any, to the lower Curt within a week;

5. If breach of any of the above conditions is committed, Learned Judge of the Sessions Court, Bhavnagar will be free to issue warrant or to take appropriate action in the matter.

6. Bail before the lower Court having jurisdiction to try the case.

7. The Police Officer shall not cause the applicant to wait unnecessarily, but will make the applicant free at the earliest, if not detained in any other case.

8. Rule is made absolute in above terms only. Direct service permitted.

DT: 22-8-2000

(M.S. Parikh, J)

/vgn.